Smith v. The Abandoned Vessel
Doc. 78

SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
12/29/08
MICHAEL N. MILBY, CLERK
BY DEPUTY [signature]

NATHAN SMITH	§	
Plaintiff	§	
	§	
V.	§	**CIVIL ACTION H-07-784**
	§	
THE ABANDONED VESSEL,	§	
In rem	§	
Defendant.	§	

PLAINTIFF NATHAN SMITH'S OBJECTION TO
PRESENTATION OF EVIDENCE AT TRIAL BY INTERVENOR

Plaintiff seeks to preclude Intervenor from contesting the claims asserted by Smith, since Intervenor is in default and has no standing to contest the claims, an issue previously asserted by Plaintiff in his motion for summary judgment.

Since Intervenor failed to file a verified claim to the vessel, Intervenor is in default, and Intervenor has no standing to contest the claims asserted by Smith.

Under Supplemental Admiralty Rule C(6), a person who asserts a right of possession or ownership interest in property must file a verified statement of right or interest. The Rule provides:

> (i) a person who asserts a right of possession or any ownership interest in the property that is the subject of the action must file a verified statement of right or interest:
> (A) within 10 days after the execution of process, or
> (B) within the time the court allows.

Pursuant to this Rule, Smith filed a motion seeking an order compelling any party with an interest to file a verified claim. The court granted the motion and

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issued its Initial Order (DKT #6) and Notice was published in the Houston Chronicle on May 28, 2007 and continued once per week thereafter for four consecutive weeks.

Intervenor did not file a verified claim.

By its own terms, the filing of a claim is a prerequisite to the filing of an answer. *See Gregory Boat Co. v. Vessel Bit Beaut,* 938 F.Supp. 414, 415 (E.D. Mich. 1996), and cases cited therein. The failure to file a claim is grounds for default judgment in plaintiff's favor and the striking of Intervenor's pleading. *See Gregory Boat Co. v. Vessel Bit Beaut,* 938 F.Supp. 414, 415 (E.D. Mich. 1996). The filing of a claim is a prerequisite to the right to file an answer and defending on the merits. *See U.S. v. One 1988 Dodge Pickup,* 959 F.2d 37, 42 n. 6 (5th Cir.1992), citing 7A Moore's Federal Practice C.16, p. 700.14 (2d Ed. 1988). As a result of the default, Intervenor is without standing before the Court. *See Gregory Boat Co. v. Vessel Bit Beaut,* 938 F.Supp. at 416.

Since Intervenor has not filed a verified claim and asserted any claim of ownership to the vessel, Intervenor is in default and has no standing to contest Plaintiff's claims.

Plaintiff prays that this motion be granted, that Intervenor be declared in default and precluded from presenting any evidence in opposition to Plaintiff's claims, and that Plaintiff be granted such other and further relief as Plaintiff is entitled to receive.

Respectfully submitted,

/s/ Richard A. Schwartz

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CERTIFICATE OF SERVICE

I certify that on the 29th day of December, 2008, a true and correct copy of ***Plaintiff, Nathan Smith's Objection to Presentation of Evidence at Trial by Intervenor*** was served on the following counsel by hand delivery:

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